Supreme Court, U.S.
FILED

(1)

No. 981544 NOV 27 1998

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

DAVID D. BOLTON -- PETITIONER

VS.

UNITED STATES POSTAL SERVICE -- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES POSTAL SERVICE

DISCIPLINARY HEARING

PETITION FOR WRIT OF CERTIORARI

DAVID D. BOLTON
1820 CHERYL DR.
COLUMBIA, SC 29210-7709
803-772-2897

---

54 pp.

QUESTIONS PRESENTED

Is it in "Good Faith" and with "Due Process" for the United States Postal Service to be the sole governing authority on the "Merits" of my Settlement Agreement with them?

LIST OF PARTIES

(X) All parties appear in the caption of the case on the cover page.

( ) All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

(X) For cases from **federal courts:**
The opinion of the United States court of appeals appears at Appendix A to the petition and is

(X) reported at 98-3006 ; or ,
( ) has been designated for publication but is not yet reported; or,
( ) is unpublished.

The opinion of the United States district court appears at Appendix ___ to the petition and is

( ) reported at _____; or,
( ) has been designated for publication but is not yet reported; or,
( ) is unpublished.

( ) For the cases from **state courts:**
The opinion of the highest state court to review the merits appear at Appendix ___ to the petition and is

( ) reported at _____; or,
( ) has been designated for publication but is not yet reported; or,
( ) is unpublished.

The opinion of the _____court appears at Appendix ___ to the petition and is

( ) reported at_____; or,
( ) has been designated for publication but is not yet reported; or,
( ) is unpublished.

_____

JURISDICTION

(X) For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 31, 1998 .

(X) No petition for rehearing was timely filed in my case.

( ) A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

( ) An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. $ 1254(1).

( ) For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix ____.

( ) A timely petition for rehearing was thereafter denied on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

( ) An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A-_____.

The jurisdiction of this Court is invoked under 28 U.S.C. $ 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Settlement Agreement and Good Faith

In Link V. Department of the Treasury, the court stated that a last chance agreement is a settlement agreement, and a settlement agreement is a contract.

In Greco V. Department of the Army, the court stated that it is an implied term of every contract that each party will act in good faith towards the other, a party may breach a contract by acting in bad faith. They also stated that it is axiomatic that a settlement agreement is a contract.

In Solar Turbines, Inc. V. United States, the court stated that a party is not limited to providing breach in that manner. However, it may establish breach by proving that the other party failed to comply with a provision of the contract in a way that was material, regardless of the party's motive. Every contract, whether the government is a party or not, contains an implied covenant of good faith and fair dealing.

In Joseph Garber V. U.S. Postal Service, Judge Wilhemina Douglas Stevenson said Garber has experienced depression which substantially limited his ability to work and the postal service made no effort to accommodate him."

In Stone Forest Industry, Inc. V. United States, the court stated that determination of whether "material breach" of contract has occurred, allowing non-breaching party to cease performance and seek remedy, depends upon nature and effect of violations in light of how particular contract was viewed, bargained for, entered into, and performed by parties.

STATEMENT OF THE CASE

On July 10, 1992 I signed a Settlement Agreement, App. E., with Bill R. Austin, Field Division General Manager/Postmaster. This letter was signed for by Charles Coble, Director Human Resources. On September 22, 1992 Myles P. Dewey, Director, Field Operations wrote a request for a reduction in grade, App. F., for me to Charles Coble. I appealed this reduction through the internal grievance procedures of the United States Postal Service. Because of their unreasonably long responses, App. G., I received an answer to my appeal on February 24, 1994. This response was signed for by George W. DePietropolo for Charles M. Coble. I appealed this decision via the Postmaster General as Mr. Coble's letter instructed me to do. This led to Mr. Robert F. Hoersdig, Jr., notifying me of my internal appeals hearing, App. D, which was scheduled for September 8 & 9, 1994. On November 14, 1995 my attorney appealed to the U.S. Merit Systems Protection Board, App. H., for an opportunity to have the merits of my actions heard before the appropriate MSPB officials.

From Myles Dewey's letter of September 22, 1992, App. F., through the November, 14, 1995 letter, App. H., the entire decision

on the merits of my case rested in the hands of the United States Postal Service. One name is on every document from the original Settlement Agreement, App. D, E, F & G, to the Step 1 Official, Charles M. Coble. From November 14, 1995 to August 31, 1998, I have been trying to have the merits of my case heard by the Merit Systems Protection Board. Presently due to the excessively restrictive bounds set on the jurisdiction of MSPB, I have not been successful in this regard as shown by the decision in App. C, pg1. Subsequently, I am now, November 27, 1998, before you, requesting a hearing on the Merits of my demotion to be heard by someone other than the United States Postal Service.

REASONS FOR GRANTING THE PETITION

A message from Postmaster General Anthony Frank in the January 17, 1991 Postal Bulletin said:

> Since 1982, the Postal Service has been involved in efforts to change the culture of our organization from an authoritarian one to one that is more participative. During the time I have been Postmaster General, I have continually affirmed my commitment to this change. I believe that people at all levels of the organization must be treated with dignity and respect.

Bill Henderson our current Postmaster General said:

> The existing grievance system is inefficient and ineffective. On grievance handling, we can't have this huge bureaucracy that constantly reinforces management's decisions with no accountability... When you think about all the great things that the Postal Service has accomplished, one thing is still a chink in our armor, from my perspective. It's summed up in two words--going postal. You put as a footnote to "going postal" the thousand of grievances that we have and the

> arbitrations... We are still viewed as overly autocratic or bureaucratic. We're viewed as not people oriented. We are going to have to fix that. We're going to reinvent our voice to be that of the employee, not of management.

In another article, Postmaster Henderson said, "I make no bones about my desire to change the systems that are creating problems for people."

I am very thankful for my strong faith in Jesus Christ, because of which I feel I have not become the typified result of this failing system. And his words at Matthew 22:37 thru 40 which say, " Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and greatest commandment. And the second is like unto it, Thou shalt love thy neighbor as thyself. On these two commandments hang all the law and the prophets." In other words, I have not "gone postal" due to this belief stated above.

Based on my understanding of Link V. Department of the Treasury, App. I, I strongly feel that the Postal Service and the Step 1 Official made a grievous error in handling my appeal. In my reading of Link's case it seems as if the Treasury Department failed to send all of the documents it relied on when it terminated his employment. They argued that the documents that were not sent would have brought about the same result since all the documents painted a poor picture of Mr. Link's performance anyway. I refer the court to App. D page 2, Appellant Exhibits, 1-10. I have a copy of these ten documents in App. J. I would like this court to know that these documents were taken out of the file before it was presented to the hearing officer, Mr. Robert F. Hoersdig, Jr. Mr. Hoersdig came to the hearing without these documents to review ahead of time. I firmly believe after you read these documents that you will agree that for these to be missing would imply a breach of my Settlement Agreement by the Postal Service acting in Bad Faith. In accord with Greco V. Department of the Army, as well, with regard to Solar

Turbines, Inc. V. United States, bad faith need not even be implicated for this event to culminate as a breach. I refer the court to App. D page 2, Management Exhibits, 1-2. At this hearing, the labor representative tried to supply these letters in justification for fulfilling their commitment of my Settlement Letter, App. E. pg 1 art. 6. The fact that I had not been scheduled for nor had I ever attended any school since the signing of the Settlement Agreement was insignificant to this hearing officer. This failure to provide such training constitutes another more obvious breach of my Settlement Agreement.

I would like for this Court to review App. K. On page one it clearly shows that my supervisor, Jerry Burriss, notified Barry Curry, Terry Mayers, Judy Shirey and Bob Young about the zone changes. Mr. Jones is like the managers whom Postmaster General Henderson said he would like to change. On page two of App. K, Mr. Jones requests a 14 day suspension for me because I failed to follow a directive I never received! He also feels that because I reported to my office on June 29, 1992 which was 19 days after his discussion with me on June, 10, 1992 that I deserve to loose 14 days of pay! I ask the Court, would you approve of being treated in this manner?

I have no one but you to look to for help in my appeal. Please help me! I signed my Settlement Agreement on July 10, 1992 with this type of treatment. Today, I can look back with humor on something Mr. Hoersdig concluded that the parties defined reasonable as "no more than Same Period Last Year personal complaint," App. E pg 3 of 3. "The record would reflect no customer complaints SPLY." Why a Settlement Agreement? This would have to have been my first question! Mr. Hoersdig concluded that I did not have any customer complaints in the last year. I was under a great deal of stress when I signed the agreement. What is his reason for looking past the above mentioned discrepancies? Why would someone say he would be better than last year, when last year was a perfect year?

The Federal Times has a subscriber rate of about 75,000 customers. I feel that on October 5, 1998 it was passed among 250,000 postal employees. The decision of the Federal Circuit Court of Appeals about my case was reported as "Court Narrows Definition of Manager." This narrowing causes few individuals in the U.S. Postal Service to qualify for jurisdiction under MSPB, which directly conflicts the Senate's effort to expand the jurisdiction of MSPB to include individuals with no protection in the U.S. Postal Service. Due to the unfortunate lack of specificity by the Senate, their efforts have been nullified, which has allowed the continued mistreatment typified in connection with "going postal." Over six years has passed since I was reduced in grade with even more mistreatment in my case and others. I request the Court to send a message to Postmaster General Bill Henderson by accepting my petition for certiorari in order to finally have the actual merits of my case reviewed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David D. Bolton

Date: November 27, 1998

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United States Court of Appeals for the Federal Circuit

98-3006

DAVID D. BOLTON,

Petitioner,

V.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

DECIDED: August 31, 1998

Before MAYER, Chief Judge, MICHEL, and SCHALL, Circuit Judges.

MICHEL, Circuit Judge.

This appeal presents yet another attempt by an employee of the United States Postal Service (the "postal service") to come within the narrow exception to the general rule that such employees' appeals from adverse personnel actions are not within the jurisdiction of the Merit Systems Protection Board (the "Board"). With our disposition of this appeal, several open questions about the outer limits of Board jurisdiction and how relevant criteria are to be adjudicated by the Board in establishing that jurisdiction will be resolved.

David Bolton filed an appeal with the Board challenging his reduction in pay and grade by the postal service. After a hearing, an Administrative Judge (the "AJ") dismissed Bolton's appeal for lack of jurisdiction. See Bolton v. United

the NLRB's jurisdiction, and the statutory definitions of supervisor and judicial definitions of manager may not be used to create a "third group" of postal service workers who do not fall within the scope of either agency's jurisdiction. See id. at 1201-02. Thus, the boundary between NLRB and Board jurisdiction divides the class of all postal service employees into two distinct and mutually exclusive subgroups, and there may not be a gap in between.

There is no indication, however, that the AJ here concluded, explicitly or implicitly, that Bolton would fall beyond both the NLRB's and the Board's jurisdictional reach. As discussed above, it is clearly the case that Bolton was neither a supervisor nor a manager. Bolton, however, submitted a letter from the Chief Shop Steward of the local collective bargaining unit, which states that Bolton would "not be permitted to become and active member of the National Association of Letter Carriers," in support of his assertion that he also falls outside of the scope of the NLRB's jurisdiction. There is no indication, however, that Bolton ever applied to the National Association of Letter Carriers for membership, or that he was denied membership. The letter on which Bolton relies is merely advisory, and does not represent the final say on Bolton's legal status with respect to the collective bargaining unit. Nor has Bolton shown any legal authority suggesting he is ineligible for union membership as a matter of law. Thus, the AJ's refusal to grant Board jurisdiction over Bolton's appeal does not create the conflict with McCandless that Bolton suggests.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DAVID D. BOLTON, Appellant, v. UNITED STATES POSTAL SERVICE, Agency.	)	DOCKET NUMBER AT-0752-96-0156-I-1 DATE: SEP 08 1997

John P. Gamlin, Esquire, John P. DiFalco & Associates, P.C., Fort Collins, Colorado, for the appellant.
Pamela J. Ramsey, Philadelphia, Pennsylvania, for the agency.

BEFORE
Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on February 26, 1997, because it does not meet the criteria set forth at 5 C.F.R. $ 1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. $ 1201.113(b).

NOTICE TO THE APPELLANT REGARDING FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. *See* 5 U.S.C. $ 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. $ 7703(b)(1).

FOR THE BOARD:

/s/ Robert E. Taylor
Robert E. Taylor
Clerk of the Board

Washington, D.C.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
ATLANTA REGIONAL OFFICE

DAVID D. BOLTON, Appellant, v. UNITED STATES POSTAL SERVICE, Agency.	)	DOCKET NUMBER AT-0752-96-0156-I-1 DATE: FEB 26 1997

John P. Gamlin, Esquire, John P. DiFalco & Associates, P.C., Fort Collins, Colorado, for the appellant.
Dennis R. McPeters, Columbia, South Carolina, for the agency.

BEFORE
Richard P. Klein
Administrative Judge

INITIAL DECISION

INTRODUCTION

On November 15, 1995, the appellant appealed to the Board from the agency's action reducing him in grade and pay from the position of Postal Operations Specialist Senior (POSS), EAS-18, Step 9 ($48,993 per year), to the position of Part Time Flexible Clerk, PS-5, Step 0 ($16.67 per hour), at the Columbia Post Office, Columbia, South Carolina, effective October 27, 1992. The hearing the appellant requested was conducted in Columbia, South Carolina, on April 17, 1996. For the reasons set forth below, the appeal is DISMISSED for lack of jurisdiction.

statute. For, Congress intended that only true supervisors with "genuine management prerogatives" should be considered and not "straw bosses, leadmen, set-up men, and other minor supervisory employees." *Chicago Metallic Corporation*, 273 N.L.R.B. 1677, 1688 (1985), enforced in relevant part, 794 F.2d 527 (9th Cir. 1986). In the instant case, the appellant's role was to communicate instructions between management and employees with out significant discretion or independent judgment and thus did not qualify him as a supervisor. *Id.* at 1689. And, he was not in a position to effectively recommend.

For all these reasons, I find that the appellant was neither a managerial employee nor a supervisory employee as contemplated by 39 U.S.C. $ 1005(a)(4)(A). Accordingly, the Board lacks jurisdiction over the appellant's change to lower grade and pay effective October 27; 1992.

DECISION

The appeal is DISMISSED.

FOR THE BOARD:

/s/ Richard P. Klein
Richard P. Klein
Administrative Judge

NOTICE TO APPELLANT

This initial decision will be come final on APR 02 1997, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is the last day on which you can file a petition for review with the Board. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

STEP 1 OFFICIAL
CHARLES COBLE
MANAGER HUMAN RESOURCES
MID-ATLANTIC AREA
2800 SHIRLINGTON ROAD ROOM 1205
ARLINGTON VA 22206-7050

HEARING OFFICER	SIGNATURE
ROBERT F. HOERSDIG, JR. U.S. POSTAL SERVICE COLUMBUS OH 43215-1626	/s/ Robert F. Hoersdig

APPELLANT WITNESSES	POSITION, TITLE, OR OCCUPATION
ANTHONY FREEMAN	SECRETARY OF THE CHRISTIAN CONGREGATION OF JEHOVAH WITNESSES
RANDOLPH COFFEE	FORMER EMPLOYEE
EDWARD N. WATSON	POSTAL CUSTOMER
K'JELA BOLTON	APPELLANT'S WIFE
DAVID BOLTON	APPELLANT

MANAGEMENT WITNESSES	POSITION, TITLE, OR OCCUPATION
GLORIA R. COLEMAN	DECIDING OFFICIAL
GLORIA KOPLIN	POSTAL CLERK
ANN DURST	POSTAL CLERK
REBECCA DASHER	POSTAL EMPLOYEE'S SPOUSE
MELISSA SPARKS	POSTAL CUSTOMER
MYLES DEWEY	PROPOSING OFFICIAL

EXHIBITS

MANAGEMENT EXHIBITS	DESCRIPTION
1	LETTER OF 5-31-90 REQUESTING INPUT FOR TRAINING - "ENHANCING WORK RELATIONSHIPS"
2	LETTER OF 5-31-90 NOTIFICATION OF ENROLLMENT OF "ENHANCING WORK RELATIONSHIPS"

APPELLANT EXHIBITS	DESCRIPTION
1	LETTER OF CHARACTER REFERENCE DATED 9-6-94 FROM WILLIAM J. SIMS, SR.
2	LETTER DATED 11-5-92 FROM RANDOLPH COFFEE
3	LETTER DATED 11-16-92 FROM STEPHANIE SCOTT

4	LETTER DATED 11-12-92 FROM ROBERT YONCE
5	LETTER OF APPRECIATION DATED 11-7-85
6	LETTER OF APPRECIATION DATED 8-31-83
7	LETTER DATED 12-3-90 FROM JUANITA ANDREA COLLIER-JORDAN (CHARACTER REFERENCE)
8	LETTER DATED 9-7-94 FROM MANAGER CONSUMER AFFAIRS AND CLAIMS
9	LETTER DATED 8-10-92 FROM HELEN MITCHELL, POSTAL CUSTOMER
10	LETTER DATED 8-13-92 FROM FIELD DIVISION, GENERAL MANAGER/ POSTMASTER

The subject "Notice of Proposed Reduction in Grade and Pay" was received by appellant on September 23, 1992 (tab B). The appellant answered in person on October 6, 1992 and provided numerous submissions (tab C). A "Letter of Decision" dated October 21, 1992 was received by the appellant on October 26, 1992 (tab D).

In February , 1994, an initial Step I decision was rendered in this matter declaring appellant's appeal untimely. A subsequent review by the Postal Service Headquarters found the record to be some what ambiguous concerning extension of time limits and the case was remanded. The initial Step I decision was rescinded by letter dated August 1, 1994 and a hearing was subsequently rescheduled.

The hearing was held on September 8 and September 9, 1994 at the Processing and Distribution Plant, 2001 Dixiana Highway, Cayce, S.C. The record was officially close upon receipt of the transcript.

SETTLEMENT AGREEMENT

The following represents a full and final settlement of the proposed suspension dated July 1, 1992, for David Bolton:

1. The proposed suspension will be withdrawn and replaced by this document which shall be of the same category as a citable disciplinary action if necessary. This document also keeps live the current elements of past record;

2. Mr. Bolton will finish the one (1) week of Postmaster training in Lugoff, S.C.;

3. Mr. Bolton will spend one (1) week with Marvin Brittain in Batesburg, S.C. and Mr. Bolton will then become OIC in Batesburg, S.C. until further notice;

4. Mr. Bolton will maintain a peaceful relationship with employees, peers, supervisors and customers;

5. Mr. Bolton will be a model employee for one (1) year;

6. Mr. Bolton will attend a "charm school" to be agreed to by Charles M. Coble, Field Director, Human Resources and Mr. Bolton and funded by the Postal Service. Attendance will be off the clock.

7. This agreement is to give Mr. Bolton one final opportunity to reach his potential and failure to adhere to any portion of this agreement will result in Mr. Bolton being reduced in level to a position in which his record will show that he can perform.

8. This agreement does not relieve Mr. Bolton of any other standards required of other Postal employees.

9. This agreement is entered into in good faith by the Postal Service and Mr. Bolton.

/s/ Charles Coble
for: Bill R. Austin
Field Division General
Manager/PM

7/10/92
Date

/s/ David Bolton
David Bolton
Postal Operations
Specialist, Sr.

7/10/92
Date

[Original hand written]

W D Finish training ie. 1 week with PM in Lugoff - Mary Jones

W D Be OIC PM in Batesburg - 1 week with Marvin Brittain.
Then OIC till Batesburg is absorbed with Leesville.

W No D Comittment to never work for Larry Jones <u>again!</u>

W D <u>Peaceful Relationship</u>

W D Withdraw the proposed suspension.

OK with (No) (One) exception

/s/ Bill R. Austin

/s/ David D. Bolton
772-2897

[Original handwritten]

2 of 3

W D Resolved based on

W D David becoming a model OIC for at least one year with <no problems> [words in < > scored] few problems <u>reasonable</u> (Customer or Superior)

W D I want him to reach his potential
or
W D I want him reduced to a level in which he can perform.

W D I want this agreement in writing.

W D A final chance agreed
W D to by David & Me. <u>Signed</u>

OK /s/Bill R. Austin

/s/ David D. Bolton
772-2897

[Original handwritten]

What is
W D Reasonable

W D Every one has customer problems

W D David will have no more than SPLY personal complaints.

W D David will attend a charm school maybe Dale Carnegie

W D School to be agreed to by Coble & David & funded by Postal Service attended on David's personal time.

OK
/s/ Bill R. Austin

/s/ David D. Bolton
772-2897

UNITED STATES POSTAL SERVICE
[Letterhead omitted in printing]

DATE: September 22, 1992

OUR REF: EAD05:MPDewey:rmj:9992:2463M

SUBJECT: Reduction in Grade, David Bolton

TO: CHARLES COBLE
FIELD DIRECTOR, HUMAN RESOURCES
COLUMBIA DIVISION

Please prepare, for my signature, a reduction in grade for David Bolton from a Postal Operations Specialist Senior to a Part-Time Flexible Mailhandler. This reduction in grade is based on Mr. Bolton's actions while Officer-in-Charge at the Batesburg Post Office.

See attached.

Also, Mr. Larry Jones concurs with this action.

/s/ Myles P. Dewey
Myles P. Dewey
Director, Field Operations

attachments

[Letterhead omitted in printing]

U.S. POSTAL SERVICE
Mid-Atlantic Area
2800 Shirlington Road
Arlington, VA 22206-7000

February 24, 1994

David D. Bolton
1820 Cheryl Drive
Columbia, South Carolina 29210-7709

Dear Mr. Bolton:

I have just completed my consideration of your appeal dated November 25, 1992. Your appeal contested the letter of decision, issued by G. R. Coleman, District Manager, Columbia, South Carolina which reduced you from the position of Postal Operations Specialist Senior, Level 18, to a Part-time Flexible Clerk, Level 5.

The following is the Step I decision of the appeal and is rendered in accordance with the procedures found in Section 652.22 of the *Employee and Labor Relations Manual* (ELM). For the following reasons, I find the your appeal is untimely because you failed to file a written appeal for a Step I decision within the required fifteen (15) calendar days of your receipt of the letter of decision.

The record indicates that you were afforded your rights under applicable regulations (ELM-650) and that management complied with all essential procedural requirements for taking the adverse action. Furthermore, the record establishes that you received the letter of decision on October 26, 1992 and in accordance with Section 652.221 of the ELM, it contained specific instructions that you had fifteen (15) calendar days to file a written appeal to Joseph Harris,

Mid-Atlantic Area Manager, Customer Services. Hence, the deadline for filing an appeal was November 10, 1992. However, the record establishes that you did not file a written appeal until November 25, 1992 which was fifteen (15) calendar days beyond the final date to file an appeal.

As you are aware, prior to this decision, you were given the opportunity to submit an explanation for your failure to file a timely appeal. By letter dated December 28, 1993, your representative responded and stated, in part, that your appeal was timely because you made several telephone calls on November 6, 1992 to Mr. Harris' office to request a personal meeting with Mr. Harris. Your representative further stated that on November 19, 1992 you did meet with Mr. Harris and Barry Swinehart, Mid-Atlantic Area Manager, Human Resources and that at the conclusion of the meeting Mr. Swinehart allegedly instructed you that a formal letter was not required. Along with your representative's response, copies of your telephone bills were submitted confirming that you did make several calls to Mr. Harris' office.

Although my inquiry does confirm that on November 19, 1992 you did meet with Messrs. Harris and Swinehart, you have not presented any evidence that at this meeting it was agreed that the time limits for filing an appeal were extended. Contrary to your contention, in a follow-up interview with Mr. Swinehart he stated that he does not recall any agreement that provided for the extension of time limits. Mr. Swinehart's recollection is supported by a letter he sent to the Appeal Review Section Dated November 24, 1992 regarding the subject meeting. In this letter, Mr. Swinehart stated in part:

> Enclosed are copies of material David Bolton provided Mr. Harris, Manager Mid-Atlantic Area, during a meeting on November 19, 1992. During that meeting, Mr. Bolton confirmed that he had not appealed his District Manager's

> October 21, 1992 decision as instructed in Ms. Coleman's letter which he [David Bolton] signed on October 26, 1992.
>
> **We advised Mr. Bolton to file a written appeal and to explain the reason(s) for exceeding the time limitations in Ms. Coleman's decision letter**. (emphasis added).
>
> s/Barry A. Swinehart

Based upon Mr. Swinehart's letter, it is clear that an agreement was not made regarding the extension of time limits to file your appeal. To the contrary, Mr. Swinehart specifically stated that you were advised to file a written appeal and **explain the reasons for exceeding the time limits**. I place sufficient weight on Mr. Swinehart's letter in concluding that there was not an agreement to extend the time limits because this letter was written only five (5) days after the meeting and specifically addresses time limits by stating that you were advised to explain the reasons for exceeding time limits.

Furthermore, although your representative submitted copies of telephone bills which verify that you called Mr. Harris' office several times before November10, 1992, you have never contended that there was an agreement to extend the time limits **prior** to the expiration of the November 10, 1992 deadline. Rather your contention has been that the extension was granted at the November 19, 1992 meeting. Thus, I do not find the telephone receipts probative of whether an extension was, in fact, granted.

Based on the above, I find that the evidence you submitted is not persuasive that as extension to file a Step I appeal was granted. Furthermore, I find that you were until November 10, 1992 to file a written appeal but did not file an appeal until November 25, 1992. Therefore, I conclude that your appeal for a Step I decision is untimely.

If you disagree with this decision, you have the right to appeal this decision in writing to the Postmaster General, c/o EEO Compliance & Appeals Office, United States Postal Service, 475 L'Enfant Plaza, S.W., Room 9431, Washington, D. C. 20260-4245, within fifteen (15) days from the date of receipt of this letter. A copy of your appeal and any supporting documentation must also be submitted to the following address: Office of EEO Compliance and Appeals, Philadelphia Processing Center, U.S. Postal Service, P.O. Box 40596, Philadelphia, PA 19197-0596.

/s/ George W. DePietropolo
for: Charles M. Coble
Area Manager, Human Resources
Mid-Atlantic Area Office

[Letterhead omitted in printing]

November 14, 1995

US Merit Systems Protection Board
Atlanta Regional Office
401 West Peachtree Street, N.W.
Suite 1050
Atlanta, GA 30308-3519

Re: David Bolton v. US Postal Service
EEOC Hearing#: 110-94-8228X
Agency Case File#: 1D-291-1006-94

Dear Sir/Madam:

The enclosed information concerns Mr. Bolton's attempt to seek an appearance before the U.S. Merit Systems Protection Board (MSPB).

When Mr. Bolton was initially reduced by the Postal Service, at no time the Postal Agency was it explained to Mr. Bolton what rights he had as a Postal Supervisory employee. Under MSPB regulations, Mr. Bolton is a supervisor within the meaning of public law 100-90 and subsection 1201.21. Therefore, as a result of being denied timely due process notice from the Postal Service, Mr. Bolton comes to the Board three years after his reduction.

Lack of timeliness on the part of Mr. Bolton must be attributed to the Postal Service not notifying Mr. Bolton of his rights under the public law which required the Postal Service to do so.

Therefore, it is requested that Mr. Bolton now be given an opportunity to have the merits of his action heard before the appropriate MSPB official.

Sincerely,
/s/ John H. Whittleton
John H. Whittleton
Attorney-at-Law

United States Court of Appeals for the Federal Circuit

93-3354

LAWRENCE E. LINK,
Petitioner,

v.

DEPARTMENT OF THE TREASURY
Respondent.

PLAGER, Circuit Judge, concurring.

I am in full agreement with the opinion of the court, and the result reached.

Link properly invoked the jurisdiction of the Board under the MSPB's statutory power to review an adverse action -- in this case dismissal for unacceptable performance -- taken by an agency against an employee. Just as the parties to a dispute cannot by agreement grant a court or statutory board subject-matter jurisdiction over the dispute when it is otherwise lacking, neither can they by agreement take it away when it exists. The last chance agreement did not affect the Board's jurisdiction; in that respect, the AJ erred when he dismissed Link's appeal purportedly for lack of jurisdiction.

A last chance agreement is a contract under which an employee waives his statutory right of appeal; this court has held such agreements not to be against public policy. McCall v. United States Postal Serv., 839 F.2d 664 (Fed. Cir. 1988). An employee who attempts to appeal to the Board in the face of a valid and enforceable last chance agreement fails to state a claim upon which relief can be granted, because the employee has waived his right to that relief. This has nothing to do with the subject-matter jurisdiction of the MSPB or of this court. Statements by the government and the Board or its AJs to the effect that last chance agreements go to the jurisdiction of the Board are misleading and legally incorrect. If lawyers for the parties

as well as the administrative judges would adhere to correct terminology, the legal analysis would benefit.

William J. Sims, Sr.
P.O. Box 1441
Columbia, S.C. 29202
September 6, 1994

To Whom It May Concern:

I have known David Bolton for eight years. I know his wife, K'Jela and his sons, Jared and Jonathan. They are respected members in very good standing in the congregation where I preside. David and K'Jela have a close family, loving, and caring for the interests of others within our community.

Without pay or reward, David goes out of his way to help others in an unselfish manner. He has a special kindness especially for those in need and older persons. Without regard for race or religion he shows himself driven to care for others. He has been known to spend more than eighty hours each month in such endeavors.

David's unselfish interest in others would most likely carry over into the work place. He shows concern for the quality process in what he does and will seek to find the best and most efficient way to get a job done. He would show a real committment to quality customer service.

I operate a business as well and as such we install performance programs for industry. David's executive abilities would be most appreciated by most management teams in today's highly competitive society. Beyond this, I know him to be very honest and forthright. He will keep his superiors informed and will consult with them on a regular basis. If he is told to do something in another way, he will change provided it does not conflict with his conscience and good business standards.

In my judgement, any company hiring David would get a good quality manager.

Sincerely,
/s/ Will J. Sims, Sr.
William J. Sims, Sr.

Phone 803-772-7403 Voice Mail 41

[Original was handwritten]

5 Nov. 92

Randolph H. Coffee
1512 Broad St.
Leesville, S.C. 29070

I was talking the spouse of a postal employee in Batesburg & he ask me if I knew David Bolton? I said yes, He told me he was in Batesburg & he was trying to change things & the people in that town had too many relatives there & they would get him out of there this conversation took place about the 2nd/ week in August

I took all this as idle talk but then when I heard Mr Bolton got relieved I was really shocked that garbage like this could happen. I heard the same talk at the Main office when Mr Bolton was here & attempting to put people back to doing their Job. People didn't like that at all.

I really can't believe the postal service would let in my opinion Garbage like this happen.

/s/ Randolph H. Coffee

[Original was handwritten]

11-16-92

Dear Sir:

I am writing this letter in behalf of Mr. David Bolton. It is my opinion that Mr. Bolton is a very conscientious employee who expects a 100% effort from employees whom he supervises. I've always known him to give the Postal Service over 100% effort in everything he undertakes. He always tries to achieve the best for the Postal Service as if it were his own business. This is the type of employee the Postal Service should put their confidence in; not a clerk that hates her job.

I have worked with Ann Durst first at the Columbia Division offices and a little at Batesburg. She was on detail at Columbia and was perfectly content at Columbia as she was able to "flirt around, not do much work, and simply have fun." As she was content there. It was the feeling that they(the Division) were tiring of her presence. I remember one occasion when she was left some dead flowers on her desk. This upset her greatly; shortly thereafter she was returned to Batesburg and never requested back on any detail even though she tried many times to leave Batesburg. Ann hates her position at Batesburg I think she feels like a caged bird. When I heard David was going to Batesburg as ok, my first thought was boy she's gonna have field day with him. I also thought, they(Batesburg Office) will get to work now. Obviously, they hated working more than I thought enough so to try to hurt David's reputation and get him out of Batesburg.

This is a very unfortunate incident for the postal service, but it will be even more so if Mr. Bolton is left in his PTF Status and his excellent qualities are not used for the good of the postal service and to the highest extent possible. The Postal Service needs more

dedicated employees such as Mr. Bolton and fewer unhappy, dissatisfied employees who passify themselves by being troublemakers.

Sincerely,
/s/ Stephanie Scott

November 12, 1992

To Whom It May Concern:

This letter is written in reference to and in defense of Mr. David Bolton, Supervisor with the Columbia, SC Division/MSC who served as Officer-In-Charge at spoken with Mr. Bolton briefly, so this letter is not by his persuasion, but of my own free accord. From what I hear and understand, he has been treated and accused wrongly.

I am a retired Postmaster of the Batesburg, SC Post Office, retiring in November of 1990. I had over thirty-three years of service with the Post Office and Postal Service, with the last eight years as postmaster of this Level 18 City Delivery Office. I had met Mr. Bolton on several occasions while he was on detail from the Columbia MSC doing various inspections or surveys of Associate Offices. I always found him to be very friendly, helpful and knowledgeable. He conducted himself as a professional and gentleman at all times that I was in his company. Although he was at the Batesburg Post Office only a short time, I understand he succeeded in making several very advantageous changes which resulted in better pre-sorted incoming mail and sequenced circular mail. This in turn saved distribution time and clerks and carriers became more efficient. Mr. Bolton worked extremely close and well with mailers, and it surely paid off for the Office.

I do not know anything about the problem or reason for his being transferred back to Columbia MSC, but I am told that it stems from a female clerk in the Office accusing or charging him with some form of harassment. I believe the only thing he would be guilty of would be changing some of her work habits and requesting improved work performance. I do not condone sexual harassment, and it would have to be proven to me that Mr. Bolton did harass the clerk in question before I could believe that. I have worked with all employees in the Batesburg, SC Offices and had no problems with any, but I do know

this clerk in question and that she will connive or find a way to take advantage of a situation that will benefit her in some way. I do not take away from the fact that she is very capable and proficient in her work, but she intends to have her way and do as she pleases. I will not go into lengthy detail, but there seems to be more than usual favor from the MSC Field Director in her complaints. At one time she was detailed to the MSC Field Operations Office, and the Director informed me on at least two occasions that she would not return to the Batesburg, SC Office. While away this position was not filled, and before we were able to get it filled, I was informed she would be returning to the Batesburg, SC Office, and the Director set her hours and schedule, Monday through Friday. We could not get her schedule changed to include Saturday as a work day, therefore for several months before my retirement I worked every Saturday. During this time we were two PTF Employees short and could not hire. So I know first hand that many things were not being done fair and true as they should have been.

I do not believe that Mr. Bolton has been given a fair and honest chance to defend himself from whatever accusations have been leveled against him. Others have been covered for, saved in their jobs and transferred to other positions for more serious charges than I think Mr. Bolton is guilty of. I would certainly like to hear that he has been reinstated to his previous level and title with all benefits restored, with privilege to bid or transfer to other areas.

Respectfully Submitted,
/s/ Robert D. Moore

TULSA, OKLAHOMA 74101

November 7, 1985

212:RSummers:ajp9994

Letter of Appreciation

David Bolton
Supervisor, Southwest Station
U. S. Postal Service
Tulsa, OK 74101-9998

Dear David:

I would like to extend the Tulsa Postal Services appreciation and congratulations to you for your contribution of time and effort in making the 1985 Affirmative Action Week activities an outstanding success.

Your dedication to the goals of the EEO/Affirmative Action Program is an indication of your loyalty to, and support of, U. S. Postal Service Goals.

P. R. DUPUY
Sectional Center Manager/
Postmaster

August 31, 1983

David Bolton
Supt., Station/Branch Oprns.
Sheridan Station
6110 E. 51st Place
Tulsa, OK 74135-9998

Subject: Letter of Appreciation

Dear David:

We would like to extend the Oklahoma District's appreciation and congratulations to you for your contribution of time and effort in making the 1983 Career Awareness Conference sponsored by the Women's Program an outstanding success.

Your dedication to the goals of the Women's Program is an indication or your loyalty to, and support of, U. S. Postal Service goals.

Sincerely,

Joan Thrailkill
District Women's Program Coordinator
Oklahoma District

John C. Cagle, Manager
Oklahoma District

3 December 1990

Postmaster
Main Post Office
Columbia, South Carolina 29201

Sir:

During the time that Mr. Bolton was my supervisor at Eau Claire Station I was directed to perform my daily task with efficiency and to be the best I could be conscienciously.

Mr. Bolton didn't tolerate harrassment of any kind, he especially make sure in the mostly male setting that the females under his supervision was treated with the upmost respect. I must say after his departure from Eau Claire Station this particular aspect changed.

I commend and truly enjoyed Mr. Bolton for his guidance and professionalism as my supervisor along with his exemplary high moral standard.

Thank you.

Sincerely,
/s/ Juanita Andrea Collier-Jordan
Juanita Andrea Collier-Jordan

September 7, 1994

To Whom It May Concern:

During the six years I have worked in the Consumer Affairs Office, I can only recall receiving 2 Consumer Service Cards regarding David Bolton. These cards were submitted by customers during his OIC assignment.

One customer complimented David and the other customer made a complaint. Consumer Service Cards are kept on file for a year; therefore, copies of the above-mentioned cards are no longer available.

/s/ M. Suzette Adams
M. Suzette Adams
Manager Consumer Affairs & Claims
Columbia District

[Original was handwritten]

Aug. 10, 1994

Mr. Miles Dewey

Dear Sir,

On August 1st when my mail was delivered to my home, my V.A. check was not in my mail box. 2 have lived at the same address for 52 years.

I however I called the post office at about 4 p.m. and the new manager, Mr. Bolton, was still there. The reason the check was not delivered was the address on the check was 207 Wilson St. Several years ago 911 changed my number from 207 to 361 Wilson St.

Thanks to an alert post master and a new local carrier, my check was not delivered to an address that no longer existed. Mr. Bolton also notified the V.A. concerning the correct address for future use.

However, several residents with the same problem didn't understand and were very verbal toward Mr. Bolton. Thank you for sending him to our post office.

Sincerely,
/s/ Mrs. Helen Mitchell
361 Wilson St.
Batesburg, S.C. 29006-2236

[Letterhead omitted in printing]

August 13, 1992

Mr. David Bolton
U S Postal Service
Postmaster
Batesburg SC 29006-9998

Dear David:

<Looks like you are on track at this point. Keep up the positive approach.> [Text in < > was handwritten]

Mr. Dewey received a letter from Mrs. Helen Mitchell complimenting the efficient manner in which you handled VA check and assisted in notifying VA officials of her correct mailing address. A copy of her letter is attached.

Hearing from a satisfied customer confirms my belief in Postal employees. I know the Postal Service has good employees who care about their performance and the quality of service they provide to customers.

Rewards for outstanding service can sometimes come in unexpected correspondence such as the one we received about you. This commendation entitles you to receive the "Caught In The Act-Doing It Right" lapel pin. I hope you will wear this pin proudly as it symbolizes that providing quality, courteous service to customers does pay off.

A copy of this letter is being sent to Human Resources for placement in your official personnel file. Keep up the good work!

Sincerely,
/s/ Bill R. Austin
Bill R. Austin
Field Division General Manager/Postmaster

encl.

cc: Dir. FO
Human Resources, OPF

UNITED STATES POSTAL SERVICE
[Letterhead omitted in printing]

DATE: July 1, 1992

OUR REF: EAD5:LJones:jml:9993(6565I)

SUBJECT: Ignoring a Directive from an Immediate Director

TO: Director, Human Resources, Columbia, SC 29201

I am requesting that David Bolton, Postal Operations Specialist, Sr., be suspended for 14 days for deliberately ignoring a directive from his immediate director.

On Wednesday, June 10, 1992, I had a conference with Mr. Bolton to discuss my displeasure with his actions as a manager. During this discussion, I addressed an incident in which he failed to follow a directive involving sort plan changes that I had given to his supervisor. During this discussion, I informed him future acts of this nature would not be tolerated whether he approved or disapproved of my directives.

At the conclusion of this conference, I instructed Mr. Bolton to report to my office at 8:00 a.m. on Monday, June 29, 1992, to be given future instructions for his work assignments. I told him I was not sure at this point if I would allow him to go on to the OIC assignment or if he would remain in Operations Support.

On Monday, June 29, 1992, by 8:15 a.m., Mr. Bolton had not arrived at my office. I called his supervisor, Mr. Burriss, and

he informed me that Mr. Bolton was in the office of the Manager, General Mail Facility. I asked Mr. Burriss if David was aware that he was to be in my office at 8:00 a.m. Mr. Burriss said yes, because David told him so around 7:55 a.m. I instructed Mr. Burriss to have David report to the Capitol Station for IRT training. Sometime afterwards (10 to 15 minutes), I called the GMF Manager's office for David and I was told he had left.

When I called back to the ETU office, Linda Boatwright answered and I asked to speak to David. She informed me that David was on the phone. I told her to tell him I was holding for him. In the attempt to switch me, we were disconnected. I redialed and Linda had him pick up. I asked Mr. Bolton if he was to report to my office at 8:00 a.m. that morning. He told me I did not tell him where and, besides, he tried to call me this morning (Monday) and my line along with my secretary's line were busy. At that point, I asked him if he was told to report to Capitol Station. He said he was told by Jerry Burriss. I told him to go there right then (which was approximately 8:50 a.m.). Later that afternoon around 4:25 p.m., I saw David outside the Field Operations Director's office. I asked him to come into the Field Division General Manager's conference room to discuss his failure to follow my directive. He informed me that he had personal problems when he returned home from vacation on Sunday with the plumbing (at his home). He stated he decided to come to work at 6:00 a.m. that morning